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May 31, 2001

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MAY 31 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: MM Docket No. 00-166
RM-9951, 10015 and 10016
Amendment of Section 73.202(b)
Table of Allotments,
FM Broadcast Stations
(Wickenburg, Aguila and Bagdad,
Arizona)

Dear Ms. Salas:

Transmitted herewith, on behalf of Circle S Broadcasting Co., Inc., is an original and four (4) copies of its Petition for Reconsideration in MM Docket 00-166. Please contact the undersigned in the event the Commission has any questions with respect to this Petition for Reconsideration.

Sincerely,



Lee J. Peltzman
Counsel for
CIRCLE S BROADCASTING CO., INC.

Enclosure

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 00-166
Table of Allotments)	RM-9951
FM Broadcast Stations)	RM-10015
(Wickenburg, Bagdad and Aguila, Arizona))	RM-10016

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Chief, Allocations Branch

PETITION FOR RECONSIDERATION

Circle S Broadcasting Co., Inc. ("Circle S"), licensee of Station KSWG(FM), Channel 231C3, Wickenburg, Arizona, by its attorneys and pursuant to Sections 1.106 and 1.429 of the Commission's Rules, hereby seeks reconsideration of the April 13, 2001 Report and Order, DA 01-927, allotting Channel 242C3 to Wickenburg as a new channel available for application.¹ As demonstrated below, the Report and Order is inconsistent with the Commission's own actions and, in view of recent developments discussed herein, contravenes fundamental Commission policy. Accordingly, Circle S respectfully requests that the Commission reconsider portions of its Report and Order and, instead, grant Circle S's proposal to substitute Channel 242C3 as a replacement for KSWG's present operation on Channel 231C3 at Wickenburg and either delete Channel 231C3 or, alternatively, substitute Channel 231C3 for Channel 242C3 as a third local service.

¹ The Report and Order, although released on April 13, 2001, was published in the Federal Register on May 1, 2001; therefore, this Petition is timely filed. The Report and Order also allotted 297C3 as a first service to the community of Aguila, Arizona, and Channel 246C3 to the community of Bagdad as a second service.

297C3 to another community, it was technically unavailable to Aguila, and should not have been allotted, especially since Circle S offered an alternate channel (231C3).

Moreover, there is even a more fundamental reason for reconsidering the Commission allotment of Channel 242C3 to Wickenburg as a new allotment available for applications. It was beyond dispute that the Commission will not allot a channel in the absence of a bona fide expression of interest in filing an application for that allotment. Likewise, where there has been an expression of interest but the rulemaking proponent subsequently effectively abandons its interest in the allotment, the Commission has ruled that the public interest would be better served by instead granting a counterproposal made by an existing station. See Oakdale and Campti, Louisiana, 7 FCC Rcd 7600, 7601 (1992). In Oakdale, the Commission granted a petition for reconsideration which was seeking the deletion of the allotment initially made in that proceeding. The Commission concluded that there had been an abandonment of an expression of interest in the new allotment as exhibited by the failure of the proponent to object to the reconsideration deletion request and the absence of any application for the channel filed during a filing window. In a subsequent decision, the Commission concluded that the failure to respond or to object to a petition for reconsideration specifically requesting the deletion of a vacant allotment could, by itself, be interpreted by the Commission to be an abandonment of the expression of interest. See Safford, Arizona, 8 FCC Rcd 4498 n. 4 (1993).

In the instant proceeding, Wickenburg Broadcasting, the proponent of Channel 242C3, has stated that it no longer desires to file an application for that channel. See Attachment. Thus, there is no need in this case to “interpret” a failure to respond or object to a petition for reconsideration as an abandonment of an expression of interest. In this case, the rulemaking proponent has directly stated that it has abandoned its expression of interest in the new allotment.

This proceeding emanated from a proposal by Wickenburg Broadcasting, which sought the allotment of Channel 242C3 to Wickenburg as that community's third local FM service. Petitioner filed comments in support of its proposal. A counterproposal was filed by Bagdad Broadcasting Company requesting the allotment of Channel 242C3 to the community of Bagdad, Arizona, and a counterproposal was filed by Circle S requesting the substitution of Channel 242C3 as a replacement for Channel 231C3 at Wickenburg, and the modification of its license, as well as the allotment of Channel 231C3 to Aguila as a first local aural service for that community. In its Report and Order, the Commission correctly concluded that Aguila was a bona fide community for allotment purposes, but rather than allot Channel 231C3 as requested, it instead allotted Channel 297C3 to that community. It also determined that an alternate Channel 246C3 was available for allotment to Bagdad and so allotted that channel to that community. Finally, the Commission allotted Channel 242C3 to Wickenburg as that community's third local FM transmission service, making it available for applications, and denied in part Circle S's counterproposal seeking to substitute Channel 242C3 for its current Channel 231C3.

The Commission decision should be reversed in part. First, only a few weeks prior to the release of the Report and Order, the Commission issued a Notice of Proposed Rule Making, DA 01-693, released March 16, 2001, in which it proposed to allot the same Channel 297C3 to the community of Quartzsite, Arizona, as that community's second local FM transmission service. Having earlier proposed the allotment of Channel 297C3 to Quartzsite, the Commission could not technically allot that same channel to Aguila, a community located only a few miles from Quartzsite. Under Section 73.207 of the Commission's Rules, co-channel C3 allotments must be separated by at least 95 miles. Quartzsite and Aguila are well within 95 miles of each other. Accordingly, in view of the fact that the Commission had proposed the allotment of Channel

Wickenburg Broadcasting has stated that it supports a request by Circle S to substitute Channel 242C3 as a replacement for its present allotment on Channel 231C3 at Wickenburg and that, if a new channel should be allotted to Wickenburg, it be Channel 231C3.

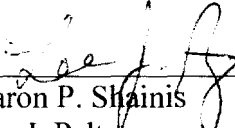
Therefore, in accordance with binding Commission policy regarding abandonment of expressions of interest, the Commission should reconsider its allotment of Channel 242C3 as a new allotment open for applications, and, instead, substitute Channel 242C3 as a replacement for Station KSWG's present operation on Channel 231C3 at Wickenburg as proposed initially by Circle S, and modify KSWG's station license accordingly. In the event the Commission desires to have an additional allotment for application available at Wickenburg, it should allot Channel 231C3 for that purpose.

WHEREFORE, in accordance with the above, Circle S respectfully requests that the Commission reverse its decision allotting Channel 242C3 to Wickenburg as a new allotment available for application, and, instead, substitute 242C3 as a replacement for Channel 231C3 for Station KSWG and modify its license accordingly.

Respectfully submitted,

CIRCLE S BROADCASTING CO., INC.

By:



Aaron P. Shainis
Lee J. Peltzman
Its Attorneys

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Suite 240
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May 31, 2001

STATEMENT

Wickenburg Broadcasting ("WB") proposed the allotment of Channel 242C3 to Wickenburg, Arizona as that community's third local FM transmission service. The Commission in its April 13, 2001, Report and Order, DA 01-927, allotted Channel 242C3 as requested by WB. No other party supported the addition of that channel to Wickenburg.

WB has determined that it no longer desires to file an application for Channel 242C3 at Wickenburg, Arizona. Therefore, it requests that the Commission reconsider its action and delete the channel. Alternatively, in the event the Commission desires to allot a third channel to the community of Wickenburg, WB supports the request of Circle S Broadcasting Co., Inc., licensee of Station KSWG(FM), Wickenburg, to substitute Channel 242C3 as a replacement for its present operation on Channel 231C3 at Wickenburg, Arizona. Channel 231C3 would remain a Wickenburg allotment and would be available for filing during the next window period.

I verify that Wickenburg Broadcasting has neither been paid nor promised any consideration for this statement.

WICKENBURG BROADCASTING

BY: 

Victor A. Michael, Jr.
Partner

Date: May 30, 2001


CERTIFICATE OF SERVICE

I, Linda E. Skiles, Office Administrator in the law firm of Shainis & Peltzman, Chartered, hereby certify that on this 31st day of May, 2001, copies of the foregoing document were sent by United States mail, postage prepaid to the following:

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Linda E. Skiles

* Via Hand Delivery